

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

April 8, 2002

Court convened at 9:00 a.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices
Patricia Benke and Richard Huffman
Clerk: D. E. Moore

D036535 People v. Gregory Allen Sherman

Cause called on merits. Neil F. Auwarter, Esq. argued for appellant. Marvin Mizell, Deputy Attorney General argued for respondent. Mr. Auwarter replied. Cause submitted.

D036646 People v. David J. Genzler

Cause called on merits. Patrick J. Hennessey, Esq. argued for appellant. Jim Dutton, Deputy Attorney General argued for respondent. Mr. Hennessey replied. Cause submitted.

D036617 Redevelopment Agency of the City of San Diego v. 5th & K, LLC

Cause called on merits. Steven Wall, Esq. argued for appellant/cross-respondent. Scott Patterson, Esq. argued for respondent/cross-appellant. Mr. Wall replied. Cause submitted.

Court recessed at 10:23 a.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Richard Huffman and James McIntyre

D033894 Syntron Bioresearch, Inc. v. Genix Biotek, Inc., et al.

Cause called on merits. William Kimball Pratt, Esq. argued for appellant. Craig Israel Celniker, Esq. argued for respondent. Mr. Pratt replied. Cause submitted.

Court recessed at 11:05 a.m. until 1:30 p.m.

D036699 Nguyen v. Nguyen

The judgment is affirmed. Respondent shall recover costs on appeal. McDonald, J.;
We Concur: Haller, Acting P.J., McIntyre, J.

D038610 Berger, Kahn, Shafton, Moss, Figler, Simon & Gladstone v. Kennedy

The judgment is affirmed. Benke, J.; We Concur: Kremer, P.J., Nares, J.

D038635 Scottsdale Insurance Company v. Essex Insurance Company

The judgment is reversed. Appellant is to recover costs on appeal. Benke, J.; We Concur: Kremer, P.J., O'Rourke, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

April 8, 2002 (Continued)

Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Gilbert Nares

Clerk: D. E. Moore

D037145 People v. Ronald Paul Bedford

Cause called on merits. David K. Rankin, Esq. argued for appellant. Pamela Ratner-Sobeck, Deputy Attorney General argued for respondent. Mr. Rankin replied. Cause submitted.

D037615 LaGuardia v. Tamura

Cause called on merits. James V. LaGuardia argued for appellant in pro per. Linda Fabian, Esq. argued for the minor. Mr. LaGuardia replied. Cause submitted.

D035959 Slatton, Sr., et al. v. Weiner et al.

Cause called on merits. Barbara Jane Goldberg, Esq. argued for appellant. Edward I. Silverman, Esq. argued for respondent. Ms. Goldberg replied. Cause submitted.

Court recessed at 2:31 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

D039010 Lunde v. Superior Court

Matter called on merits. Norma S. Marshall, Esq. argued for real party in interest. Stephen Peter Croce, Esq. argued for petitioner. Matter submitted.

Court recessed at 3:02 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Judith McConnell

D038090 Martin v. Wiles

Cause called on merits. Megan A. Richmond, Esq. argued for appellant. Gerald Martin, argued for appellant in pro per. Ms. Richmond replied.

Court recessed at 3:16 p.m. until Tuesday, April 9, 2002 at 9 a.m.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

April 8, 2002 (Continued)

D038618 Ashley v. Chinen

The judgment is reversed and the matter is remanded for further proceedings consistent with this opinion. The superior court is directed to determine the amount of mortgage principal paid by Ashley during the period from May 1986 through September 1999 (Ashley principal payments). It shall then add the Ashley principal payments to the amount previously determined to be the excess of expenses Ashley paid over the fair rental value (\$19,265.00) and subtract the sum from the net amount received from the sale of the home (\$109,422.00). The remainder is the amount of proceeds available for distribution, which shall be awarded one-half each to Ashley and Chinen. It shall then enter a new judgment reflecting the new reimbursement and distribution amounts. Appellant shall recover his costs on appeal. McDonald, J.; We Concur: Huffman, Acting P.J., McConnell, J.

D038936 In re K. H. et al., Juveniles

The judgment is affirmed. Nares, Acting P.J.; We Concur: Haller, J., McDonald, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

April 9, 2002

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald
Clerk: D. E. Moore

D037858 People v. Burgener, Jr.

D039309 People v. Burgener, Jr.

Causes called on merits. Wilson Adam Schooley, Esq. argued for appellant. Kevin Vienna, Deputy Attorney General argued for respondent. Mr. Schooley replied. Cause submitted as to appeal ONLY, D037858.

Court recessed at 9:09 a.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke

D037665 Roberson, Sr. v. San Diego Unified School District

Cause called on merits. David A. Kay, Esq. argued for appellant. John Morris, Esq. argued for respondent. Mr. Kay replied. Cause submitted.

D037326 Cundieff v. The Raymond Corporation, et al.

Cause called on merits. Francis H. LoCoco, Esq. argued for appellant, W. T. Billard, Inc. Michael P. Montgomery, Esq. argued for respondent, Cundieff. Marina Angela Macchiagodena, Esq. argued for respondent, Home Depot. Anthony E. Sonnett, Esq. was present in oral argument, but did not argue. T. Michael Reed, Esq. was present in oral argument, but did not argue. Mr. LoCoco replied. Cause submitted.

Court recessed at 10:10 a.m. to change panel members. New panel members: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Judith McConnell

D037347 Tomlinson v. Qualcomm, Inc.

Cause called on merits. Andrew Morrison, Esq. argued for appellant. Robert Bell, Esq. argued for respondent. Mr. Morrison replied. Cause submitted.

Court recessed at 10:55 a.m. to change panel members. New panel members: The Honorable James McIntyre, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Judith McConnell

D037612 Croshier v. Pacific Bell Telephone Company

Cause called on merits. Jeffrey James Geraci, Esq. argued for appellant. Karen K. Haubrich, Esq. argued for respondent. Mr. Geraci replied. Cause submitted.

Court recessed at 11:25 a.m. until 1:00 p.m.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

April 9, 2002 (Continued)

D036012 People v. Daniels

The judgment of conviction on count one is reversed. McIntyre, J.; We Concur: McDonald, Acting P.J., McConnell, J.

D039676 Johnson v. The Superior Court of San Diego County/The People

Justices Huffman and Haller deny the petition. Justice McDonald would have issued an order to show cause and stayed trial court proceedings.

D039452 In re Pogue on Habeas Corpus

The petition is denied.

D038596 In re Erica E. et al., Juveniles

Judgments affirmed. Benke, Acting P.J.; We Concur: Nares, J., McIntyre, J.

Court reconvened at 1:00 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Gilbert Nares
Clerk: D. E. Moore

D034200 People v. Mara Paola Plascencia

D038233 In re Mara Plascencia on Habeas Corpus

Causes called on merits. Allen R. Bloom, Esq. argued for appellant. Marilyn George, Deputy Attorney General argued for respondent. Mr. Bloom replied. Cause submitted as to appeal ONLY, D034200.

Court recessed at 1:29 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Terry O'Rourke
Clerk: D. E. Moore

D035964 J. David Franklin et al. v. Fasack et al.

Cause called on merits. Timothy S. Noon, Esq. argued for appellant/cross-respondent, J. David Franklin. David Gilleon, Esq. argued for respondent, Fasack. Robert Martin Shaughnessy, Esq. argued for respondent, Roybal and etc. Steve Uribe, Esq. was present in oral argument, but did not argue. Mr. Noon replied. Cause submitted.

Court recessed at 2:00 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Gilbert Nares

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

April 9, 2002 (Continued)

D037421 Koerting v. San Diego County Board of Civil Service Commissioners et al.

Cause called on merits. English R. Bryant, Deputy County Counsel argued for respondent. Laura J. Farris, Esq. argued for appellant. Cause submitted.

D036754 Harris v. Beresh

Cause called on merits. Thomas John Tighe, Esq. argued for appellant. Judith E. Klein, Esq. argued for respondent. Mr. Tighe replied. Cause submitted.

D037492 Marsch v. Stern et al.

Cause called on merits. Marcelle E. Mihaila, Esq. argued for appellant. Martha C. Luemers, Esq. argued for respondent. Ms. Mihaila replied. Cause submitted.

Court recessed at 3:10 p.m. until Wednesday, April 10, 2002 at 9 a.m.

D039039 In re Jessica M., a Juvenile

The court's finding it had jurisdiction over the girls is affirmed. The dispositional orders are reversed and the court is directed to comply with the notice provisions of the ICWA. If after proper notice and inquiry a tribe does not intervene, the dispositional orders shall be reinstated. If a tribe intervenes, the court is ordered to conduct a new dispositional hearing in accordance with the ICWA. O'Rourke, J.;
We Concur: Benke, Acting P.J., Nares, J.

D037564 People v. Shell

The petition for rehearing is denied.

D035587 Shannahan v. Smith & Dailey

Judgment affirmed. Benke, J.; We Concur: Kremer, P.J., Huffman, J.

D039568 In re Sarah L., a Juvenile

Upon filing an abandonment of appeal, the appeal is dismissed.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

April 10, 2002

D036691 Norwest Mortgage, Inc. v. State Farm Fire and Casualty Company

The opinion filed March 18, 2002, is ordered certified for publication.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Gilbert Nares

Clerk: D. E. Moore

D037629 Rainshine Resources, Inc. v. International City Bank

Cause called on merits. Scott Alan Miller, Esq. argued for respondent. Jack B. Winters, Jr., Esq. argued for respondent. Cause submitted.

D037141 People v. Christian Balverde

Cause called on merits. John F. Guenther, Esq. argued for appellant. Marvin Mizell, Deputy Attorney General argued for respondent. Mr. Guenther replied. Cause submitted.

D037859 People v. Lorenzo Shaw

Cause called on merits. Denise Rudasill, Esq. argued for appellant. David Delgado-Rucci, Deputy Attorney General argued for respondent. Ms. Rudasill replied. Cause submitted.

D035658 People v. Daniel Erez

Cause called on merits. John J. Lanahan, Esq. argued for appellant. Marilyn George, Deputy Attorney General argued for respondent. Mr. Lanahan replied. Cause submitted.

Court recessed at 10:35 to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Terry O'Rourke

D037094 Bomil, Inc. v. Hoffelder et al.

Cause called on merits. Daniel S. Levinson, Esq. argued for appellant. Mark R. Moore, Esq. argued for respondent. Mr. Levinson replied. Cause submitted.

Court recessed at 10:47 a.m. until 1:30 p.m.

D039649 Herbert O. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Herbert O. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

D038530 In re D. S., a Juvenile

The order is reversed. Huffman, Acting P.J.; We Concur: Nares, J., McConnell, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

April 10, 2002 (Continued)

D039222 In re Dominic H., a Juvenile

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Nares, J., O'Rourke, J.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices
Terry O'Rourke and Judith McConnell

Clerk: D. E. Moore

D038121 Cunningham et al. v. Universal Underwriters

Cause called on merits. Colrena Kay Johnson, Esq. argued for appellant. Michael Jordan, Esq. argued for respondent. Ms. Johnson replied. Cause submitted.

D036061 People v. Mustafa Sirat

Cause called on merits. Joanna McKin, Esq. argued for appellant. Teresa Torreblanca, Deputy Attorney General argued for respondent. Ms. McKin replied. Cause submitted.

D037300 Kvaas Construction Co., Inc. v. Valley Insurance Services, Inc., et al.

Cause called on merits. James G. Ehlers, Esq. argued for appellant/cross-respondent.
Rocky K. Copley, Esq. argued for respondent/cross-appellant. Mr. Ehlers replied. Cause submitted.

D037661 Gentry, et al. v. Ebay, Inc.

Cause called on merits. James C. Krause, Esq. argued for appellant. Michael Rhodes, Esq. argued for respondent. Mr. Krause replied. Cause submitted.

Court recessed at 3:05 until Thursday, April 11, 2002 at 9 a.m.

D039222 In re Dominic H., a Juvenile

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Nares, J., O'Rourke, J.

D038426 People v. Vaeao

The judgment is affirmed. Huffman, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.

D039797 Doe v. Superior Court of San Diego County

Let a writ issue directing the superior court to vacate its rulings of March 27 and 28 and enter an order appointing former counsel to represent petitioner. The original petition, exhibits and all other filings in this case shall remain under seal. This opinion is made final immediately as to this court. (Rule 24(d).)
Haller, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D039566 In re Polk on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

April 11, 2002

D035048 People v. Dutra
The petition for rehearing is denied.

D039598 Pardee Construction Company v. Superior Court of San Diego County/Cook et al.
The petition is denied.

D035773 People v. Rowe
We modify the judgment to strike the parole revocation fine and direct the court to modify the abstract of judgment accordingly and to send a corrected abstract of judgment to the Department of Corrections. In all other respects, the judgment is affirmed. O'Rourke, J.; We Concur: Kremer, P.J., Benke, J.

Court convened at 9:00 a.m.

Present: The Honorable James McIntyre, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Judith McConnell
Clerk: D. E. Moore

D038625 Jani-King of California, Inc., et al. v. City of Irvine, et al.
Cause called on merits. Melvin Floyd Seifert, Esq. argued for respondent. William Joseph Becker, Esq. argued for appellant. Cause submitted.

D038626 Bullet Freight Systems, Inc., et al. v. Fireman's Fund Insurance Company
Cause called on merits. Paul Francis Rafferty, Esq. argued for appellant. David Arthur Urban, Esq. argued for appellant. John V. Hager, Esq. argued for respondent. Mr. Urban replied. Cause submitted.

D036543 Paul Corriere v. Lucky Stores, Inc.
Cause called on merits. Robert J. Feldhake, Esq. argued for appellant. L. Rachel Lerman Helyar, Esq. argued for respondent. Mr. Feldhake replied. Cause submitted.

D037591 Saffro v. Elite Racing, Inc.
Cause called on merits. John Morris, Esq. argued for appellant. A. Carl Yaeckel, Esq. argued for respondent. Mr. Morris replied. Cause submitted.

Court recessed at 10:45 a.m. until 1:30 p.m.

D036387 Houston General Insurance Group v. Harwell
The judgment is affirmed. Costs are awarded to respondent. Huffman, J.;
We Concur: Benke, Acting P.J., Nares, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

April 11, 2002 (Continued)

Court reconvened at 1:30 p.m.

Present: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Judith McConnell
Clerk: D. E. Moore

D037127 People v. Turath Alkhafaji

Cause called on merits. Mary Woodward Wells, Esq. argued for appellant. Lisa Jacobsen, Deputy Attorney General argued for respondent. Ms. Wells replied. Cause submitted.

Court recessed at 1:45 p.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Judith McConnell

D037045 Brower v. Eucalyptus Village Apartments et al.

Cause called on merits. Jeffrey S. Doggett, Esq. argued for appellant. Robert W. Jackson, Esq. argued for respondent. Mr. Doggett replied. Cause submitted.

D036039 McAlindin v. San Diego County Civil Service Commission et al.

Cause called on merits. Alan Hahn, Esq. argued for appellant. William H. Songer, Deputy County Counsel argued for respondent. Mr. Hahn replied. Cause submitted

D038682 Grant v. Fernandez

Cause called on merits. Karyn S. Neue, Esq. argued for appellant. Michael Sobel, Esq. argued for respondent. Ms. Neue replied. Cause submitted.

Court recessed at 2:35 p.m. until Friday, April 12, 2002 at 9 a.m.

D039851 The People v. The Superior Court of San Diego County/Alcazar

The petition is denied.

D039835 People v. Gibbs

Defendant's appeal following guilty plea is inoperative for failure to comply with either Penal Code Section 1237.5 or California Rules of Court, rule 31(d). The appeal is dismissed without prejudice to refile notice of appeal after the sentencing.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

April 12, 2002

Court convened at 9:00 a.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices
Alex McDonald and James McIntyre
Clerk: D. E. Moore

D035303 People v. Mumm

D038779 In re Mumm on Habeas Corpus

Causes called on merits. Cindi B. Mishkin, Esq. argued for appellant. Christine Levingston, Certified Law Student argued for respondent. Ms. Mishkin replied. Cause submitted as to appeal ONLY, D035303.

D037942 Grassilli v. Barr et al.

Cause called on merits. Megan Richmond, Esq. argued for appellant. David F. Taglienti, Deputy Attorney General argued for respondent. Ms. Richmond replied. Cause submitted.

D037057 People v. Wallace

D038339 In re Wallace on Habeas Corpus

Causes called on merits. Carolyn Chapman, Esq. argued for appellant. Betsy Hartwig, Deputy Attorney General argued for respondent. Ms. Chapman replied. Cause submitted as to appeal ONLY, D037057.

D037763 Tiangco v. P and G Company et al.

Cause called on merits. Robert W. Tiangco, argued for appellant in pro per. Wayne Templin, argued for respondent in pro per. Jonathan Geem, Esq. argued for respondent, P and G Company. Mr. Tiangco replied. Cause submitted.

D037084 White v. Lim

Cause called on merits. Louis E. Goebel, Esq. argued for appellant. Richard H. Nakamura, Esq. argued for respondent. Mr. Goebel replied. Cause submitted.

Court adjourned at 10:45 a.m.

D039795 Ubolratana aka Julie Jensen v. Superior Court of San Diego County/Jensen

The petition is denied without prejudice to refiling after the superior court's ruling on the order to show cause set for April 18, 2002.

D038420 People v. Cuellar

Judgment affirmed. Kremer, P.J.; We Concur: Huffman, J., O'Rourke, J.

D038770 People v. Alexander

Judgment affirmed. Kremer, P.J.; We Concur: Huffman, J., O'Rourke, J.